

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

HARVEY PATRICK SHORT,

Plaintiff,

v.

CIVIL ACTION NO. 2:14-cv-16506

COMMISSIONER JIM RUBENSTEIN, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

Pending before the Court are Defendant Commissioner Jim Rubenstein's and Benita F. Murphy's Renewed Motion to Dismiss (the "Renewed Motion to Dismiss"), (ECF No. 67), and the Motion for Sanction Pursuant to Rule 37(d) of the Federal Rules of Civil Procedure by Commissioner Rubenstein and Benita F. Murphy (the "Motion for Sanction"), (ECF No. 71). By Standing Order entered on May 7, 2014 and filed in this case on May 16, 2014, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of proposed findings and recommendations for disposition. (ECF No. 4.) On October 29, 2015, Magistrate Judge Tinsley filed proposed findings and recommendations for disposition (the "PF&R"), in which he proposes that the Court find "that [Plaintiff's] failure to comply with the federal rules governing discovery and the failure to update the court and defense counsel with a working address and phone number warrants dismissal of this civil action." (ECF No. 72 at 6.) Magistrate Judge Tinsley further recommends that the Court grant the Motion for Sanction and dismiss this action pursuant to

Federal Rules of Civil Procedure 37(d) and 41(b), or alternatively grant the Renewed Motion to Dismiss. (*Id.*)

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the Plaintiff's right to appeal this Court's order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Objections to the PF&R were due by November 16, 2015. (ECF No. 72 at 6–7.) To date, no objections have been filed.

The Court therefore **ADOPTS** the PF&R to the extent that Magistrate Judge Tinsley recommends that the Court grant the Motion for Sanction and dismiss this matter pursuant to Federal Rules of Civil Procedure 37(d) and 41(b). (ECF No. 72.) However, the Court **DECLINES TO ADOPT** the PF&R insofar as Magistrate Judge Tinsley alternatively recommends that the Court grant the Renewed Motion to Dismiss. (*Id.*)

Accordingly, the Court **GRANTS** the Motion for Sanction, (ECF No. 71), **DENIES AS MOOT** the Renewed Motion to Dismiss, (ECF No. 67), **DISMISSES** this case pursuant to Federal Rules of Civil Procedure 37(d) and 41(b), and **DIRECTS** the Clerk to remove this case from the Court's docket.

**IT IS SO ORDERED.**

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: November 20, 2015

A handwritten signature in blue ink, appearing to read 'Th. Johnston', is written over a horizontal line.

THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE